

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KIMBERLY KENNEDY (aka Gorton),
individually and in her capacity as Personal
Representative of the Estate of JAY D. (J.D.)
KENNEDY, and as guardian for her children,
KEITH TEUFEL and TERA TEUFEL,

Plaintiffs,

v.

CLARK COUNTY, a municipal corporation
and political subdivision of the State of
Washington; THE CITY OF RIDGEFIELD, a
municipal corporation; NOEL SHIELDS,
CATHY DORIOT, CINDY GULL and JOHN
DOES 1-10; MICHAEL THOMAS BURNS
(aka HUMPHREY); ANGELA BURNS and
MATTHEW JAMES BURNS, husband and
wife,

Defendants.

NO. C01-5631 JKA

**PETITION FOR APPROVAL OF
MINOR SETTLEMENTS WITH THE
CITY OF RIDGEFIELD**

HEARING DATE: August 11, 2003

COMES NOW, John R. Connelly, Jr. and Lincoln C. Beauregard of the Law Offices
of John R. Connelly, Jr. on behalf of minors Tera N. Teufel and Timothy ("Keith") Teufel,
minors, and pursuant to SPR 98.16W, petition the above-entitled court for an order approving

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THE CITY OF RIDGEFIELD - 1 of 15
(C01-5631 JKA)

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JOHN R. CONNELLY, JR.
2301 North 30th
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(253) 593-5100 - FACSIMILE (253) 593-0380

1 two minor settlements with the City of Ridgefield. These are the second set of settlements
2 reached in this case. This Court had previously approved a settlement with Clark County on
3 August 12, 2003. Dan Albertson served at that time as the settlement Guardian *Ad Litem*
4 appointed pursuant to SPR 98.16W to review the reasonableness of the settlement. At that
5 time the Court was advised that the case was proceeding forward against the City of
6 Ridgefield and included the stipulation in its Order that Mr. Albertson remain as Guardian *Ad*
7 *Litem* to review any future settlements with the City of Ridgefield and/or Noel Shields.
8

9 Since that time this Court's ruling on qualified immunity had been appealed to the
10 Ninth Circuit. The Ninth Circuit affirmed this Court's ruling on this issue. Defendant sought
11 an *en banc* hearing on a motion for reconsideration. This motion was denied and the Court's
12 ruling again upheld. Defendant then moved to stay issuance of the mandate to prepare a
13 petition for certiorari to the United States Supreme Court.
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15 In March and April of 2006 and, after the denial of the motion for reconsideration, a
16 substantial amount of work was recommenced on the underlying case. Settlement demands
17 and requests for policy limits were prepared and sent to counsel for the City of Ridgefield.
18 Negotiations ensued. Negotiations and research then took place regarding the amounts of
19 insurance assets available to the City of Ridgefield under the language of its policy of
20 insurance with the Association of Washington Cities. Attorney Timothy Gosselin of Burgess
21 Fitzer in Tacoma, serving as coverage counsel, became involved in the issue of the amount of
22 coverage available and the issue of whether the policy was a waste policy. Ultimately, a
23 proposed settlement was reached subject to the approval of this Court. The settlement is for
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1 the remaining policy limits of the City of Ridgefield's policy of insurance with the
 2 Association of Washington Cities. The policy is a "waste" policy – meaning that the policy
 3 limits are diminished by the amount of defense costs. As a result of this work Plaintiffs felt
 4 that a policy limits demand should be issued at this time and settlement attempted at this time
 5 rather than waiting until a much later date because the amount of available insurance would
 6 be reduced by additional defense costs.

7
 8 The petition for minor settlement is based upon the following facts – many of which
 9 are identical to the petition presented to this Court in August 2003:

10 I.

11 Minor child Tera N. Teufel was born on January 19, 1989 to Kimberly Kennedy and
 12 Keith Teufel. Tera's current residence is with her mother at 29335 NE 72nd Avenue,
 13 Battleground, WA 98604. Tera is currently 17 years of age. She will turn 18 on January 19,
 14 2007.

15 II.

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 17 Minor child Timothy ("Keith") Teufel was born on January 18, 1991 to Kimberly
 18 Kennedy and Keith Teufel. Timothy's current residence is with his mother Kimberly
 19 Kennedy at 29335 NE 72nd Avenue, Battleground, WA 98604. Timothy is 15 years of age
 20 and will turn 18 on January 18, 2009.

21 III.

22 Daniel M. Albertson was appointed Guardian *ad litem* for the two minor children by
 23 order of this Court. In approving the minor settlement on August 12, 2003, the Court Ordered
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1 that Mr. Albertson continue as guardian *ad litem* to review any subsequent settlements with
2 the City of Ridgefield or Noel Shields. Exhibit A.

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4 **IV.**

5 Keith Teufel is the natural father of Tera N. Teufel and Keith T. Teufel. Keith Teufel
6 was married to Kimberly Kennedy at the time of these two children's births. However, he
7 and Kimberly divorced during 1986. Since then, he has not been involved in the lives of the
8 two minors.

9 **V.**

10 The City of Ridgefield has agreed to settle claims against it filed by Kimberly
11 Kennedy, Tera N. Teufel and Keith T. Teufel. A claim has also been filed by the Estate of
12 Jay Kennedy. This settlement occurred through negotiations between John R. Connelly, Jr.
13 and defense counsel Patrick McMahon of Carlson, McMahon & Sealby, PLLC in Wenatchee,
14 Washington.

15
16 Kimberly Kennedy (Now Gorton) is permanently paralyzed as a result of the incident
17 that gave rise to this lawsuit. It is proposed that the settlement be split with a present value
18 amount of approximately \$1.448 million dollars going to settle Kimberly Kennedy's case and
19 the estate of Jay Kennedy and the remaining settlement funds split equally between the two
20 minors. The settlement with Kimberly Kennedy would include an upfront payment and future
21 periodic payments. This split would provide upfront payments of \$80,000 each to Tera N.
22 Teufel and Keith T. Teufel and future periodic payments as set forth in paragraph X below:
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VI.

As noted in the previous petition to approve minor settlements and as this Court is aware from the fact that the case was litigated before it, this case arises out of a shooting which occurred on September 25, 1998. At that time, the two minor children were living with Kimberly Kennedy and her husband Jay Kennedy at 29303 NW 71st Avenue, Ridgefield, WA 98642. As a result of this shooting Kimberly Kennedy was paralyzed from the waist down and Jay Kennedy was killed.

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VII.

The shooting occurred early in the morning on Friday, September 25, 1998 when 13 year-old Michael Thomas Burns (a.k.a. Humphreys) broke into the Kennedy residence and shot Jay and Kimberly Kennedy in the presence of their two young children, Tera and Timmy Teufel.

The Kennedy's home was located in an unincorporated portion of Clark County on the outside edge of the City of Ridgefield. By way of an inter-local agreement between the two municipalities, the Ridgefield Police Department (RPD) had primary responsibility for "first response" law enforcement calls that encompassed the Kennedy home. On September 6, 1998, Ridgefield Police Officers Shields and Ellingson met with Kimberly and her husband, Jay, to take down a report for an act of criminal molestation. Kimberly reported that a troubled thirteen-year old boy named Michael Burns had sexually assaulted her nine-year-old daughter, Tera Teufel.

1 The Kennedys informed Officer Shields of the RPD about more than the Burns' sexual
2 molestation of Tera. Kimberly specifically made it a point to inform Shields that Michael had
3 demonstrated dangerous propensities that were cause for serious concern. In making the
4 complaint against Michael, Kimberly clearly expressed her fear for her family's safety
5 because she was terrified as to what Burns might do upon learning that his criminal actions
6 had been reported to the police.
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8 Clark County's Child Assault Investigation Center, CAIC, was brought in under the
9 inter-local agreement to investigate the complaint. Detective Cindy Bull of Clark County was
10 assigned the file and was also informed that the Burns were not to be told of the identity of the
11 informant.

12 After a few days had passed without any information, and on the recommendation of a
13 RPD officer, Kimberly Kennedy called Detective Bull to check on the status of the
14 investigation. She found that nothing had been done. Detective told Kimberly that she would
15 call her back after she had a chance to read the file. During this conversation, Kimberly stated
16 that she wanted to get the ball rolling and that she was "tired of going to bed every night
17 scared to go to sleep because I didn't know what was going to happen that night or the next
18 day." Detective Bull responded by saying that "she understood that they weren't supposed to
19 contact the [Burns] until [Kimberly] was contacted," and that Kennedys "would be notified
20 before the [Burns] family was notified." Thereafter, the first documented attempt to
21 investigate the molestation by Detective Bull was not until September 22nd, now fourteen (14)
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1 days after the molestation was first reported. This "contact" on September 22nd consisted of
2 only *one* phone call to the Kennedy residence during which Detective Bull left a message.

3 Defendants acknowledge that interviewing officials from Michael Burns' school was
4 part of Detective Bull's "investigative plan" regarding the September 6, 1998 molestation
5 report. Had Detective Bull timely investigated this case, she would have learned of Michael's
6 extensive and troubled disciplinary history which included repeated demonstrations of
7 Michael escalating violent propensities. During a conversation the school principle had with
8 Michael, he told her that it would be worth it for him to plan out and exact revenge on
9 someone, even if he knew he would get in trouble for it. More information regarding Clark
10 County's involvement in this case is included in the previous petition for approval of the
11 settlement with Clark County.
12

13 On the morning of September 24, 1998, the events igniting Michael Burns
14 demonstrated ferocity were put in motion, setting the stage for the shooting. Having become
15 ever increasingly terrified for her family's safety, Kimberly placed a call to Officer Shields of
16 the Ridgefield Police Department at 7:55 a.m. to again address her concerns. Officer Shields
17 was not on duty at that time so Kimberly left him a message. At about 5 p.m. that same day,
18 Officer Shields reported for duty and received Kimberly's message. Without returning her
19 call, Officer Shields decided to drive to the Kennedy home to speak with Kimberly.
20 However, without any explanation at all, Officer Shields then changed his mind and drove to
21 the Burns house.
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1 Upon arrival, Officer Shields spoke with Michael's mother, Angela, at the threshold of
2 her front door. During that conversation, Officer Shields, for some unknown reason, and
3 contrary to policy, chose to wrongly take the investigation back into his own hands even
4 though it was presently under the control of CAIC. By doing so, Officer Shields also broke
5 the assurances he had previously made to Kimberly, thus igniting the violent rage that
6 simmered within Michael Burns and which the Ridgefield Police Department was aware of,
7 and had been specifically been told about. While acting in his official capacity as a law
8 enforcement officer, Officer Shields violated the standard investigation protocols, ignored the
9 inter-local agreement between Clark County and the City of Ridgefield, neglected to use
10 reasonable care, demonstrated deliberate indifference to the express concerns which had been
11 brought to the RPD's attention, and broke his express assurances to Kimberly Kennedy, by
12 informing Ms. Burns about the molestation investigation against her son, Michael Burns. He
13 conducted this conversation, despite having full knowledge of Michael's dangerous
14 propensities. Later that evening, Ms. Burns told Michael of the molestation investigation
15 against him.
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18 When Jay and Timmy returned home late that evening, Kimberly told Jay about what
19 had transpired and that she was frightened. She told Jay that Officer Shields had reassured
20 her that he would patrol the area around their house and around the Burns' house, and that he
21 had said not to worry, they would fine. Because of these assurances from Officer Shields, Jay
22 and Kim decided to "leave immediately in the morning and get out of town."
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1 Kimberly's fears became reality when Michael Burns, propelled by anger, entered the
2 Kennedy home in the still of the night, with a gun. When he left the Kennedy home moments
3 later, Jay Kennedy lay dead on the bedroom floor and Kimberly laid paralyzed in bed
4 struggling for breath and pleading with her frightened children to call the police for help.

5 Officer Shields notification of the Burns family of the identity of the informant was
6 directly contrary to policy and permitted this crime to occur. His actions demonstrated
7 deliberate indifference to the warnings and concerns brought to the RPD's attention. His
8 representations regarding providing patrol coverage were not accurate and the promised patrol
9 coverage did not occur. Nothing was done to prevent Michael Burns from going directly to
10 the Kennedy home and acting out his revenge despite the direct warnings that this is precisely
11 what would occur.
12

13 VIII.

14 Claims were brought by the personal representative, Kimberly Kennedy, on behalf of
15 herself and the two minor children. A claim has also been filed on behalf of the Estate of Jay
16 Kennedy. Claims were based on 42 USC Sec. 1983 as well as state law claims for
17 negligence. The qualified immunity issue under Sec. 1983 had been appealed to the Ninth
18 Circuit. Plaintiffs prevailed. Had they not done so the negligence claims would still have
19 proceeded forward.
20

21 IX.

22 Defendants argued that they had no duty to prevent this occurrence, that the
23 Kennedy's should have left town rather than relying on Officer Shield's representations, that
24 the actions of Officer Shields and the Ridgefield Police Department met all standards of care
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1 and that the requirements of 42 U.S.C. Sec. 1983 had not been met under the circumstances of
2 this case. Defendants appealed the qualified immunity issue and then appealed for an *en banc*
3 hearing before the Ninth Circuit after this first appeal was unsuccessful. The arguments of
4 defendants are set forth in the published opinions and dissents filed as a result of those
5 appeals. Liability and legal obligations were strongly contested.

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7 X.

8 This case was originally scheduled to go to trial on May 12, 2003. The claims against
9 Clark County had been settled in 2003 after mediation with Greg Bertram of Judicial
10 Arbitration and Mediation Services in Seattle. The issue of qualified immunity was then
11 appealed by the City of Ridgefield and the case has been on appeal for approximately three
12 years. After two unsuccessful appeals in the Ninth Circuit, defendants sought to stay issuance
13 of the mandate while they petitioned for an appeal to the United States Supreme Court. Their
14 motion to stay issuance of the mandate was granted.

15
16 As noted, the parties recently entered into settlement discussions. Policy limits
17 demands and a settlement contract were sent to defendants and to the Association of
18 Washington Cities, defendants' insurance pool and settlement negotiations occurred. Work
19 was done regarding a number of insurance issues including issues relating to the claims that
20 the policy was a waste policy. Additional time to respond to the demand was requested by
21 defendants and permitted by plaintiffs. Ultimately, negotiations proved fruitful and a
22 settlement agreement reached which provides the following payments to the minors:
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XI.

It is proposed that the minors' portion of the settlement occur as follows. It is intended that these payments fit with the prior periodic payments approved by this Court as a result of the settlement with Clark County.

A. Tera N. Teufel

1. Upfront payment \$80,000.

2. Periodic payments as follows:

Guaranteed Benefits Expected Benefits

A. Beginning at age 18 (01/19/2007), \$465 payable

monthly for 17 years certain only.

\$94,860

\$94,860

Last guaranteed payment is due 12/19/2023.

B. At age 35 (01/19.2024),

a lump sum payment of \$100,000.

\$100,000

\$100,000

Total \$194,860 \$194,860

The present value cost of the future periodic payments is \$100,000 and the rate of return 5.56%, Exhibit B.

B. Keith T. Teufel

1. Upfront payment \$80,000.

2. Periodic payments as follows:

Guaranteed Benefits Expected Benefits

A. Beginning at age 18 (01/18/2009), \$562 payable

monthly for 17 years certain only.

\$114,648

\$114,648

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1 Last guaranteed payment is due 12/18/2025.

2 B. At age 35 (01/18/2026),

3 a lump sum payment of \$100,000. \$100,000 \$100,000

4 **Total \$214,648 \$214,648**

5 The present value cost of the future periodic payments is \$100,000 and the rate of
6 return 5.65%, Exhibit C.

7 **XII.**

8 The plaintiffs have been represented by John R. Connelly, Jr., Lincoln C. Beauregard
9 of the law offices of John R. Connelly, Jr. The fee agreement in light of the appeals is a
10 contingent fee of forty three percent on each claim. This fee will be split between the Law
11 Offices of John R. Connelly, Jr. and the Paulson Firm on a 80% / 20% basis with 80% going
12 to the law offices of John R. Connelly, Jr. and 20% going to the Paulson Firm.

14 **XIII.**

15 Litigation costs from the time of the appeal to date total \$4,738.49. These costs have
16 been paid by Kimberly Gorton-Kennedy from her funds from the first settlement. The
17 amount of \$1,579.50 should be allocated from each minor settlement to pay for these costs.

19 **XIV.**

20 It is understood and agreed that Defendants may make a "qualified assignment" of
21 their obligation to make the aforesaid future periodic payments to Prudential Assigned
22 Settlement Services Corporation (Assignee). Plaintiffs consent to this assignment and accept
23 such obligation as a direct obligation of Prudential Assigned Settlement Services Corporation
24 and in substitution of the obligation by Defendants. It is understood and agreed that
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Prudential Assigned Settlement Services Corporation will fund the obligation to make future periodic payments by purchasing an annuity from The Prudential Insurance Company of America, rated A+ (Superior) by A.M. Best (See exhibits B & C). It is further understood and agreed that The Prudential Insurance Company of America will issue a Statement of Guarantee, guaranteeing Prudential Assigned Settlement Services Corporation with respect to the obligation assumed. Exhibit D.

XV.

Daniel M. Albertson was duly appointed Guardian *ad litem* for the minors for purposes of investigating the adequacy of the minor settlements by order of this Court. A report from Mr. Albertson with regard to the first settlement was filed and a subsequent report with regard to this settlement will be filed separately with the Court.

XVI.

Wherefore, petitioners pray as follows:

1. That the settlement with Defendant City of Ridgefield and/or it's respective representatives or subdivisions for settlement of damages to the two minor children, Tera N. Teufel and Keith T. Teufel, as set forth herein be approved by the Court in accordance with Washington law and SPR 98.16W.

2. That the law offices of John R. Connelly, Jr. be authorized to disburse the up-front settlement funds for the minors from the settlement as follows:

(a)	To Daniel M. Albertson for Guardian Ad Litem fees in this case	\$660.00
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- | | | | |
|----|-----|---|------------|
| 1 | (b) | To Kimberly Gorton-Kennedy | \$1,579.50 |
| 2 | | For litigation costs | |
| 3 | | incurred in handling the case of | |
| 4 | | Tera N. Teufel | |
| 5 | (c) | To Kimberly Gorton-Kennedy | \$1,579.50 |
| 6 | | for litigation costs | |
| 7 | | incurred in handling the case of | |
| 8 | | Keith T. Teufel | |
| 9 | (d) | To The Law Offices of John R. Connelly, Jr. | \$61,920 |
| 10 | | for attorneys fees | |
| 11 | | incurred in handling the case on behalf of | |
| 12 | | Tera N. Teufel | |
| 13 | (e) | To The Law Office of John R. Connelly, Jr, | \$61,920 |
| 14 | | for attorneys fees | |
| 15 | | incurred in handling the case on behalf of | |
| 16 | | Keith T. Teufel | |
| 17 | (h) | To the Paulson Firm for attorney fees, | \$15,400 |
| 18 | | incurred in handling the case on behalf of | |
| 19 | | Tera N. Teufel | |
| 20 | (i) | To the Paulson Firm for attorney fees, | \$15,400 |
| 21 | | incurred in handling the case on behalf of | |
| 22 | | Keith T. Teufel | |

3. That Kimberly Kennedy as guardian of the persons and estates of Tera N. Teufel and Keith T. Teufel be authorized pursuant to the laws of the state of Washington be authorized to sign all appropriate documentation to put the settlements into place as described

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1 herein. That the above described periodic payment plan on behalf of Tera N. Teufel and
2 Keith T. Teufel is hereby approved by the Court and that the settlement and allocation of
3 funds as herein described be approved by the Court as reasonable under all circumstances of
4 this case.

5 4. That Mr. Albertson's fees be approved as reasonable and that Daniel M.
6 Albertson be discharged as Guardian *Ad Litem* now that his work is concluded.

7 5. That, the up-front payments in this case be made directly to the trust account at
8 the Law Offices of John R. Connelly, Jr. for disbursement as set forth in this Order.

9 Dated this 3 day of August, 2006.

10
11
12 THE LAW OFFICES OF JOHN R. CONNELLY, JR.

13
14 By: 

15 John R. Connelly, Jr., WSBA No. 12183
16 jconnelly@connelly-law.com
17 Lincoln C. Beauregard WSBA No. 32878
18 lincolnb@connelly-law.com
19 Attorneys for Plaintiffs
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